

## REMARKS/ARGUMENTS

### **General Remarks**

Applicants thank Examiners Holloman, Roberts and Lundgren for the courtesy of an interview extended to Applicants' representative on October 20, 2009. During the interview the *Hinz* and *Fath* references were discussed as well as potential claim amendments and provisions of evidence. Arguments similar to those presented during the interview are reiterated below and claim amendments as suggested by the Examiners are included herein.

### **Claim Status**

Claims 5, 6, 8, 9, 12 and 14-24 are pending. Claims 5, 6, 8 and 9 are currently amended. Claims 1-4, 7 and 10 were previously canceled without prejudice and claims 11 and 13 are currently canceled without prejudice. Claims 12 and 14-24 remain as previously presented. Claims 5 and 8 are amended to limit component (a) to a Markush group of malonic acid, maleic acid and malic acid which finds support in previously presented claim 11, and to limit component (b) to a Markush group of glycolic acid and lactic acid which finds support in previously presented claim 6. Dependent claims 6 and 9 are amended to reflect the amendments to independent claims 5 and 8 respectively. No new matter is believed to have been entered.

### **§103(a) Rejections**

Claims 5, 6, 8, 9 and 11-23 have been rejected under 35 U.S.C. §103(a) as obvious in view of *Hinz* (US 5,785,962) and *Fath* (GB 2321595). Claim 24 has been rejected under 35 U.S.C. §103(a) as obvious in view of *Hinz*, *Fath* and *Fukuchi* (US 5,888,488). Applicants respectfully traverse these rejections.

The claimed invention relates to a method of treating hair to improve hair elasticity and suppleness, as well as to reduce the signs of bending from, for example, hair braiding. This treatment is effected with the use of two hair cosmetic compositions A and B. Composition A comprises (a) a polycarboxylic acid (or salt thereof) and (c) at least one organic solvent (selected from aromatic alcohols, alkylene carbonates, and polyols). Composition B comprises (b) a hydroxymonocarboxylic acid (or salt thereof) and (c) at least one organic solvent (selected from aromatic alcohols, alkylene carbonates, and polyols).

It is noted that component (a) has been limited to “at least one polycarboxylic acid or a salt thereof wherein said polycarboxylic acid is selected from the group consisting of malonic acid, maleic acid and malic acid” and component (b) has been limited to “at least one hydroxymonocarboxylic acid or a salt thereof wherein said hydroxymonocarboxylic acid is selected from the group consisting of glycolic acid and lactic acid” in light of the Examiners’ concerns regarding claim scope versus the evidence of unexpected results as indicated in the interview of October 20, 2009.

It is also noted that during a portion of the interview the Examiners expressed some concern regarding the significance of the results reported in the original specification. As such, Applicants submit herewith a Declaration by Dr. Kaharu attesting to such significance. Most notably, Dr. Kaharu explains that differences in recovery from the signs of braiding as reported in the specification (%s) are “significant” with respect to Example 9 versus Comparative Example 9, Example 10 versus Comparative Example 10, and Example 12 versus Comparative Example 12, and even with respect to Example 11 versus Comparative Example 11 which shows the smallest differences of the group, namely 79% versus 71% and 97% versus 92%. In addition, Dr. Kaharu notes that the “differences are also significant due to these increases being perceptible to the consumer.”

Accordingly, in light of the Declaration, Applicants submit that the Office's assertions that the differences in recoveries reported in the specification "do not support Applicant's claim of unexpected results" (Advisory Action dated September 24, 2009) and the Office's concerns with respect to the significance of such differences expressed in the October 20, 2009 interview and the outstanding Office Action, were at best speculative, and are now shown to be unfounded.

In addition, the Office currently asserts that "there is no control example wherein components a and b are not present, therefore, it can not be determined if the results are "unexpected" or merely additive ..." (Office Action, page 4). In light of this assertion Applicants note that Tables 3 and 4 of the specification include comparisons between Example 9 and Comparative Example 9 which could be considered "control" examples as alluded to by the Office.

More specifically, Table 3 includes hair shampoos (i.e., "composition A" as claimed) that contain components (a) and (c) (but not component (b) - see e.g., claim 5), and Table 4 includes hair conditioners (i.e., "composition B" as claimed) that contain components (b) and (c) (but not component (a) - see again, claim 5). It is noted that exemplary shampoo 9 contains components (a) and (c) whereas comparative shampoo 9 does not, and exemplary conditioner 9 contains components (b) and (c) whereas comparative conditioner 9 does not. Therefore, upon the combined use of the respective shampoo and conditioner (i.e., exemplary shampoo 9 with exemplary conditioner 9 and comparative shampoo 9 with comparative conditioner 9), Applicants submit that, contrary to the Office's assertion, one skilled in the art would understand that the results of a+c (composition A) and b+c (composition B) are more than merely additive.

In light of the foregoing addressal of the Office's concerns regarding the evidence of non-obviousness and for at least the following *re-asserted* reasons, Applicants again submit that the claimed invention is not rendered obvious by any combination of the cited references.

*Hinz* discloses a hair shampoo composition providing improved comb-ability, volume and luster (Abstract) and *Fath* discloses a hair conditioning composition providing improved gloss, comb-ability and softness (Abstract). Neither *Hinz* nor *Fath* discloses improved reduction in signs of bending as obtained by Applicants claimed method. Accordingly, one skilled in the art would not have expected the use of the compositions of *Hinz* and *Fath* in combination to yield superior reduction in signs of bending of treated hair as obtained by Applicants' claimed method.

As such, Applicants submit that the Office (i) has failed to provide motivation for one skilled in the art to select the specific shampoo of *Hinz* out of thousands of known shampoos and combine it with the specific conditioner of *Fath* out of thousands of known conditioners, and (ii) has failed to provide a rationale basis or evidence of how one skilled in the art would reasonably conclude that the combination of (a) a volumizing, luster-improving and combability-improving shampoo with (b) a glossifying, softening and combability-improving conditioner, would render obvious a hair treatment that improves the reduction in signs of bending.

Opposite to the Office's allegations, Applicants submit that one skilled in the art (i) would have no reason/motivation to select and combine these two particular hair products (i.e., the specific shampoo of *Hinz* with the specific conditioner of *Fath*), and (ii) even if one were to select and combine these two products by mere chance, one would not expect that the result of the combined use would reduce the signs of bending of treated hair.

As evidence of the non-obvious reduction in the signs of bending of treated hair obtained by Applicants' claimed method, Applicants again point out Examples 10 and 11 as well as Comparative Examples 10 and 11 of Tables 3-5.

Example 11 and Comparative Example 11 (the shampoo of which is described in Table 3 and the conditioner of which is described in Table 4) show the difference between a hair treatment method as claimed (Example 11) and a hair treatment as disclosed by Hinz (Comparative Example 11). The hair treatment method as claimed (Example 11) uses a shampoo (Table 3) within the claimed parameters along with a conditioner (Table 4) within the claimed parameters. In contrast, the hair treatment as disclosed by *Hinz* (Comparative Example 11) uses a shampoo (Table 3) within the claimed parameters and within the disclosure of *Hinz* along with a "generic/off-the-shelf" conditioner (Table 4) outside the claimed parameters.

Upon reviewing the data of Example 11 and Comparative Example 11 (Tables 3 and 4 of the original specification - pages 27-28), one can see that Example 11 shows a superior % recovery from the signs of bending just after treatment (79 versus 71) and one hour after treatment (97 versus 92) as compared to Comparative Example 11. These differences in % recovery equate to an increase in recovery of 8% and 5% respectively.

In addition, Example 10 and Comparative Example 10 (the shampoo of which is described in Table 3 and the conditioner of which is described in Table 4) show the difference between a hair treatment method as claimed (Example 10) and a hair treatment as disclosed by Fath (Comparative Example 10). The hair treatment method as claimed (Example 10) uses a shampoo (Table 3) within the claimed parameters along with a conditioner (Table 4) within the claimed parameters. In contrast, the hair treatment as disclosed by *Fath* (Comparative Example 10) uses a "generic/off-the-shelf" shampoo (Table

3) outside the claimed parameters along with a conditioner (Table 4) within the claimed parameters and within the disclosure of *Fath*.

Upon reviewing the data of Example 10 and Comparative Example 10 (Tables 3 and 4 of the original specification - pages 27-28), one can see that Example 10 shows a superior % recovery from the signs of bending just after treatment (83 versus 61) and one hour after treatment (97 versus 87) as compared to Comparative Example 10. These differences in % recovery equate to an increase in recovery of 22% and 10% respectively.

Accordingly, Applicants submit that the Office's conclusion that Examples 10-11 and Comparative Examples 10-11 "do not support Applicant's claim of unexpected results" is completely unfounded.

In light of the foregoing, Applicants again submit that the cited references do not render obvious Applicants' claims. Accordingly, Applicants respectfully request withdrawal of the obviousness rejections of record.

## Conclusion

For the reasons discussed above, Applicants submit that all now-pending claims are in condition for allowance. Applicants respectfully request the withdrawal of the rejections and passage of this case to issue.


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